IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.86 OF 2005

Balwant Bapuso Pawar ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. A.P. Mundargi, with Mr. V.B. Tapkir, for the Applicant.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

18th January 2005

P.C.:

. Heard Counsel for the parties. Perused the record. The incident in question has occurred on 9th November 2004. It is stated that when the complainant approached the Applicant for permission for leave, the Applicant retorted that whether in his caste, Diwali is celebrated. On this basis, the Applicant is being prosecuted for

offence punishable under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. To attract the provisions of the said Act, it is necessary that the utterances ought to have been made in presence of public, so as to ridicule the person or insult or intimidate him with intent to humiliate being member of the Scheduled Caste or Scheduled Tribe. There is no evidence on record, except the bare words of the complainant that these utterances were made within public view. The only person, who was present at the relevant time is Mr. Phad, who is a Junior Jailor. He has clearly denied of any such utterances made by the Applicant. If it is so, no offence is made out. The learned A.P.P. fairly accepts that there is no other evidence to support the claim of the complainant. Indeed, the prosecution is also relying on the letter addressed to I.G. (Prisons) on the next date of incident. However, as mentioned earlier, the allegation contained therein is not corroborated by the sole person present at the relevant time. That means no offence is made out. If it is so, this is a fit case for grant of anticipatory bail.

Accordingly, this application is allowed on the following terms.

(A) The Applicant is granted anticipatory bail in connection with CR.No. 72/2004 registered at Juna Rajwada Police Station, Kolhapur, on his executing personal bond in the sum of Rs.10,000/- (Rupees one thousand only) with one local surety in the like amount.

(B) The Applicant shall abide by all the conditions mentioned in section 438(2) of the Code of Criminal Procedure, as applicable to the State of Maharashtra.

(A.M.KHANWILKAR,J.)